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August 8, 2005

VIA HAND DELIVERY

Mr. Charles L.A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Dr., Suite 100
Columbia, SC 29210

Re: Petition of the Office of Regulatory Staff to Request Forfeiture of the Bond and to Request Authority to Petition the Circuit Court for Appointment of a Receiver.
PSC Docket No.: 2005-110-W/S

Dear Mr. Terreni:

Enclosed please find the original and ten (10) copies of the Office of Regulatory Staff's Reply to Mr. and Mrs. Williams' Motion for Continuance. Please date stamp the extra copy enclosed and return it to me via our courier.

Please let me know if you have any questions

Sincerely,

Benjamin P. Mustian

BPM/rng
Enclosure

cc: Louis Lang, Esquire
Jessica J.O. King, Esquire
Julie F. McIntyre, Esquire
Hugh Buyck, Esquire

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2005-110-W/S

AUGUST 8, 2005

IN RE: Petition of the Office of Regulatory)
Staff to Request Forfeiture)
of the Piney Grove Utilities, Inc.)
Bond And to Request Authority)
To Petition the Circuit Court for)
Appointment of a Receiver)

REPLY TO MR. AND MRS. WILLIAMS'
MOTION FOR CONTINUANCE

The Office of Regulatory Staff ("ORS") hereby submits this Response to the Motion for Continuance of D. Reece Williams, IV and Elizabeth P. Williams filed with the Commission on August 8, 2005 in the above referenced docket.

INTRODUCTION

This matter comes before the South Carolina Public Service Commission ("the Commission") by way of a Petition filed by ORS on April 22, 2005, in which ORS requested that the Commission schedule a hearing in order to determine whether Piney Grove Utilities, Inc. ("Piney Grove") failed to comply with statutory and regulatory requirements relating to the operation of wastewater utilities. The Commission initially set this matter for hearing on May 26, 2005; however, after motion of Piney Grove, the parties consented to a continuance of the hearing based, in part, upon certain actions in Circuit Court whereby Piney Grove consented to the appointment of a receiver for its wastewater treatment facility in the Lloydwood subdivision located in Lexington County, South Carolina. In a letter responding to Piney Grove's Motion for a Continuance and Motion to Sever filed on May 3, 2005, ORS stated that while there were

continuing concerns that should be addressed immediately, the immediate threat, at that time, had abated. The Commission granted the Motion for Continuance and set the hearing for August 9, 2005.

On August 5, 2005, Hugh W. Buyck, Esquire, attorney representing D. Reece Williams, IV (individually "Mr. Williams), and Elizabeth P. Williams (individually "Mrs. Williams") (collectively "Mr. and Mrs. Williams") in their personal capacity, filed a Motion for Leave to Intervene. On August 5, 2005, ORS filed with the Commission its reply to the Motion for Leave to Intervene consenting to Mr. and Mrs. Williams' intervention. Additionally, on August 8, 2005, Mr. Buyck filed a Motion for Continuance of D. Reece Williams, IV, and Elizabeth P. Williams.

THE MOTION FOR A CONTINUANCE SHOULD BE DENIED AS MR. AND MRS. WILLIAMS ARE NOT CURRENTLY PARTIES TO THIS PROCEEDING

As of the time of this filing, the Commission has yet to rule on Mr. and Mrs. Williams' Motion for Leave to Intervene and, therefore, they do not currently have standing to make a Motion for Continuance. While ORS has consented to the Motion for Leave to Intervene, Piney Grove and DHEC, who are the additional parties to this proceeding, have neither commented on nor consented to such intervention. 26 S.C. Code Regs. 103-804.M defines "Intervenor" as "[a] party who files a petition to intervene in a proceeding before the Commission, as provided by R. 103-836, and **after such petition is approved by the Commission or presiding officer.**" [Emphasis added] 26 S.C. Code Regs. 103-804.J provides that the term "Party of Record" includes "applicants, complainants, defendants, respondents, and intervenors." Finally 26 S.C. Code Regs. 103-862 provides that "**[a]ny party of record** desiring a continuance shall, immediately upon receipt of notice of the hearing or as soon thereafter as facts requiring such

continuance come to its knowledge, notify the Executive Director, stating in detail the reasons why such continuance is necessary.” [Emphasis added] In this instance, Mr. and Mrs. Williams have not been admitted as an intervenor, and have not been granted the rights afforded to Parties of Record. As such, the Motion for Continuance should be denied based upon their inability to file such a motion.

THE MOTION FOR CONTINUANCE WAS NOT TIMELY FILED

As stated above, ORS filed its Petition with the Commission on April 22, 2005 and, as stated in the attached Certificate of Service, notified Mr. Williams of the pending action at that time. Further, both Mr. and Mrs. Williams were served, via certified mail, with ORS’s Response to Motion to Sever and Motion for Joinder of Additional Parties which was filed on May 13, 2005. This motion specifically discussed whether Mr. and Mrs. Williams should be joined as parties to this proceeding. Mr. and Mrs. Williams were given personal notice of these proceedings, at the latest, at this time. Mr. and Mrs. Williams, as President and Vice-President of Piney Grove, have been personally informed of most, if not all, of these proceedings in that they were copied on correspondence both among the parties and with the Commission. Mr. Williams has also been personally present and involved in various meetings and discussions regarding the pending hearing.

Mr. and Mrs. Williams, although having personal knowledge of these proceedings, have chosen to wait until the eleventh hour to file their Motion for Leave to Intervene and even later to file their Motion for Continuance. The Motion for Leave to Intervene, while provided via electronic mail on August 4, 2005, was not filed with the Commission until August 5, 2005. Additionally, even though the “Document Properties” available on the emailed version of the

Motion for Continuance filed by Mr. and Mrs. Williams indicates the signed and executed document was created at 9:55 a.m. on Friday, August 5, 2005, the document was not emailed to the parties until 6:21 p.m. that evening – almost eight and one-half hours later and after close of business at the beginning of a weekend. As stated above, Commission Regulation 103-862 requires parties to file such Motions for Continuances as soon as the facts requiring such continuances come to its knowledge. Mr. and Mrs. Williams, while aware of these proceedings for some time, are just now notifying the Commission of their need to continue this matter. Such actions have hampered the ability of the parties of record and the Commission to properly respond in that Mr. and Mrs. Williams have backed everyone into a corner and have attempted to make it appear as though there is only one possible solution. Such procedural strategies should neither be considered nor rewarded by this Commission.

While ORS has consented to Mr. and Mrs. Williams being admitted as parties of record to this proceeding, they should not be allowed to unfairly manipulate the Commission's ability to properly and timely hear this matter. Mr. and Mrs. Williams failure to secure counsel and to protect their personal rights in this proceeding was a matter of their choosing. Mr. and Mrs. Williams clearly had actual notice (or, at a minimum, constructive notice) of the happenings and occurrences surrounding these matters. It would appear that after deciding to wait as long as possible, Mr. and Mrs. Williams have filed their motion as a tactic solely to delay the Commission in making a decision as to the responsibilities of the persons subject to its jurisdiction. It would be inequitable to grant them the relief they now plead for.

MR. AND MRS. WILLIAMS HAVE NOT SHOWN
THE NEED FOR A CONTINUANCE

“An intervenor may not be able to apply for a continuance, especially where no new material issues are raised after the intervenor comes into a case.” 17 Am. Jur. 2d Continuance § 92 *citing* Beene v. Bryant, 201 S.W.2d 268 (Tex. Civ. App. Amarillo 1947). The issues raised in the Petition filed by ORS relate solely to the adequacy and propriety of service provided by Piney Grove to its customers. The remedies sought also relate solely to providing such adequate and proper service. Mr. and Mrs. Williams have, voluntarily, pledged their personal assets to secure the operations of Piney Grove and have failed to show this Commission what additional issues they would be able to raise that the existing parties have not already proposed to the Commission. The Motion for Continuance states “[w]ithout a continuance, the parties will have inadequate opportunity to not only evaluate the effect of the Circuit Court Order or its ramifications but also to fully explore and develop discovery.” Piney Grove’s counsel, in numerous filings with the Commission, has raised the issue of the Circuit Court proceedings and it is unlikely Mr. and Mrs. Williams would be able to provide any novel and material issues concerning this matter. Further, Piney Grove has been afforded the opportunity, and has exercised its rights, for discovery. Any issues resulting from such discovery are already before the Commission.

The issues to be decided before this Commission solely relate to: 1) whether this particular utility provided adequate and proper service and, if not, whether the bond should be revoked and fines and penalties levied, and 2) the authority to petition the Circuit Court for a receiver granted. Any issues relating to Mr. and Mrs. Williams’ personal assets are irrelevant to ORS’s petition and to this proceeding generally. Therefore, as Mr. and Mrs. Williams have not

shown how they will reasonably be able to raise new material issues, their Motion for Continuance should be denied.

**GRANTING THE CONTINUANCE WOULD CAUSE GREAT HARDSHIP ON ALL
PARTIES AND, MORE IMPORTANTLY, THE CUSTOMERS**

As the Commission is well aware, the issues surrounding Piney Grove and its wastewater facilities are those that have attracted a great deal of media attention and have greatly impacted the customers. The current parties to this proceeding have expended a tremendous amount of preparation for this hearing and several necessary parties, witnesses, and customers have gone to great lengths and have made irreversible sacrifices to attend the hearing set for August 9, 2005. The issues that this Commission will be called upon to decide relate to serious harms to the public health and the environment. Piney Grove has demonstrated its unwillingness to cooperate with various entities and its disregard for the Commission's regulations and its authority. Piney Grove has ignored state law, specifically the Commission and DHEC regulations, and is unlawfully billing customers, refusing to make necessary repairs and perform maintenance on the system, failing to satisfy complaints filed with the Commission and ORS and avoiding communications with customers and regulatory entities.

Pursuant to the consent of the parties of record, this matter has already been continued in order to afford the parties the opportunity to adequately prepare for this hearing. The Commission issued its Notice of Hearing on June 29, 2005, over one month ago. Several witnesses were required to alter their schedules to meet such an agenda. Specifically, ORS Witness Willie Morgan altered his plans to attend a National Association of Regulatory Utility Commissioners seminar to avoid the Commission having to amend the hearing date again. ORS Witness Tracey Wilkes and DHEC Witness Sonya Johnson have prepared to leave an out-of-

town training session early in order to be present at the hearing. Further, it is ORS's understanding that several residents of the various Piney Grove communities have taken leave or of their work and other personal obligations in order to attend the established proceedings. Varying the schedule this late in the process would only cause unnecessary additional expense and time and would result in a hardship to all parties.

Both Piney Grove and Mr. and Mrs. Williams indicated that, considering the appointment of a receiver for two of Piney Grove's systems and Piney Grove's consent of appointment of a receiver for the third, the Commission should delay its right to hear this proceeding. These arguments seem to suggest that these arrangements have satisfied any requirements that the Commission might impose upon Piney Grove and that they, in and of themselves, result in adequate and proper service. ORS believes, and will present evidence to the Commission, that while these receiverships do put the customers for these systems in a somewhat better position, that Piney Grove is still ultimately responsible for these system and is failing to assume that responsibility.

Furthermore, although there are operators for these systems, the systems are still not in compliance with Commission regulations or other state law and are continuing to fail to provide adequate and proper service. As evidenced by the Emergency Order No. 2005-398 issued by Commissioner Clyburn in Docket No. 2005-220-WS, Piney Grove is continuing to take actions that violate Commission regulations. In light of the apparent continued disregard and disdain for this Commission that Piney Grove has demonstrated and considering the severe and unjust injuries suffered by the customers, a continuance would mean a great disservice to the residents in these communities by delaying a hearing on the merits of this case and continuing to subject these customers to such unacceptable practices.

THE COMMISSION IS NOT BOUND BY SCRCP RULE 40(H)


The Public Service Commission operates under the authority and requirements of the Administrative Procedures Act (“APA”) which provides “In a contested case, all parties must be afforded an opportunity for hearing after notice of not less than thirty days.” S.C. Code Ann. § 1-23-320(A). “Statutes override rules of court, if in conflict.” State v. Cottingham, 224 S.C. 181, 77 S.E.2d 897 *citing* Columbia W. P. Co. v. Columbia Land Co., 42 S.C. 488, 20 S.E. 378, 540 *and* Grollman v. Lipsitz, 43 S.C. 329, 21 S.E. 272. The statutory authority granted to the Commission to set this matter for hearing not less than thirty days after notice is given is in direct contravention to SCRCP Rule 40(H) relating to setting non-jury actions for trials on the merits. It would be impossible to comply with SCRCP Rule 40(H) setting a hearing 120 days “after the filing of the summons and complaint or the last pleading that adds a new party to the action” while also following the hearing scheduled allowed by the APA. In the event no new party was added, if the Commission was required to follow the South Carolina Rules of Civil Procedure, it would be unable to set matters for hearing pursuant to the APA thirty day time frame. Such a recommendation that the Commission is required to follow the aSCRCP rule is clearly inconsistent with its obligation to follow the timeframes set forth in the APA. Further, the South Carolina Supreme Court has held that “[a] motion for continuance is within the sound discretion of the trial court and the ruling will not be reversed without a clear showing of abuse.” South Carolina Department of Social Services v. Broome, 307 S.C. 48, 413 S.E.2d 835 (1992). Considering the fact that Mr. and Mrs. Williams have been given notice as discussed *infra*, that Rule 40(H) directly conflicts with the ability of the Commission to operate under the APA, and

that any continuance granted by the Commission is within its sole discretion, the Commission should not grant such motion and should continue with the hearing as scheduled.

WHEREBY, ORS prays that the Commission:

1. Deny the Motion for Continuance filed by Mr. and Mrs. Williams with the Commission on August 8, 2005.
2. Grant the relief sought by the ORS in its Petition filed April 22, 2005.
3. For other appropriate action the Commission may deem necessary.

OFFICE OF REGULATORY STAFF

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Columbia, South Carolina
August 8, 2005